

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

SUSAN MILLS, §  
A Tenured Faculty Member, §  
University of Texas - Brownsville, §  
Plaintiff, §

VS.

Civil Action No. \_\_\_\_\_

JULIET GARCIA, §  
In her official capacity, and §  
ALAN ARTIBISE, §  
in his official capacity, and §  
DANIEL HEIMMERMANN , §  
in his official capacity, and §  
UNIV. OF TEXAS at BROWNSVILLE §  
a Domestic Political Corporation, §  
Defendants. §

## **FIRST VERIFIED COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the Plaintiff, SUSAN MILLS, a tenured faculty member at the University of Texas at Brownsville ("UT-B") who has a property right in her employment position because of her status as a tenured professor who seeks to enjoin, both immediately and during the course of this litigation, university officials from perpetuating and implementing an unconstitutional violation of her due process rights that have resulted in her termination, clearly an adverse employment action, and also seeking this Court's declaration with respect to Plaintiff's contractual rights as a tenured professor vis-à-vis UT-B, ultimately seeking injunctive relief without damages in the form of a decree that she be reinstated to her former position as a tenured faculty member, showing to the Court as follows:

**I.**

**PARTIES**

1.1 At the time of the filing of this verified complaint Plaintiff, Susan Mills, is and was, at all times material to this claim for relief, a resident of Cameron County, Texas. She may be served via her undersigned counsel.

1.2 Defendant, Juliet Garcia, is a natural person who may be served at her office at the University of Texas at Brownsville, 80 Fort Brown, Brownsville (Cameron County), Texas. She is named in her official capacity only.

1.3 Defendant, Alan Artibise, is a natural person who may be served at his office at the University of Texas at Brownsville, 80 Fort Brown, Brownsville (Cameron County), Texas. He is named in his official capacity only.

1.4 Defendant, Daniel Heimmerman, is a natural person who may be served at his office at the Mississippi University for Women, 1100 College Street, MUW-1603, Columbus, MS 39701-5800. He is named in his official capacity only.

1.5 The University of Texas ("UT") at Brownsville ("UT-B") is one of the seven campuses of the UT system. UT-B is operated independently as an educational arm of the state of Texas. UT-B is a state government agency that affects commerce within the meaning of 42 U.S.C. § 2000e(b). *See* 42 U.S.C. § 2000e(b). Defendant UT-B may be served with process by serving its counsel or its president.

**II.**

**Jurisdiction**

2.1 This court has jurisdiction over this claim for relief because it is a case or controversy arising from the Constitution and laws of the United States pursuant to 18 U.S.C. § 1331 and 42

U.S.C. § 1983. Attorneys' fees are requested pursuant to 42 U.S.C. § 1988. No duplicate claims for relief are brought against both agents, officers and/or employees who are sued only in their official capacities as having acted under the color of state law.

### **Venue**

3.1 Venue for the injunctive relief requested in this claim for relief lies in the Brownsville Division both because the Plaintiff's employment contract was made in Cameron County, Texas, and the unconstitutional actions which were taken to violate the Plaintiff's due process rights occurred in Cameron County, Texas.

## **IV.**

### **INTRODUCTION**

4.1 Plaintiff Susan Mills began working for UT-B/TSC as an English writing tutor in 1992. In 1994, she became an adjunct faculty member with UT-B/TSC in its English department and has worked in the English Department since then. In 2005, Plaintiff Susan Mills began her tenure track and through hard work, talent, and superior performance of her job duties was granted tenure with UT-B/TSC in August 2010.

4.2 The main teaching area for Plaintiff Susan Mills has been English composition. For the last thirteen years, Plaintiff Susan Mills has carried a full workload of teaching five (5) courses per semester.

4.3 On November 10, 2010, the University of Texas System Board of Regents voted to terminate the partnership between the University of Texas at Brownsville (UT-B) and Texas Southmost College (TSC).

4.4 Subsequent to such announcement, the UT-B faculty was advised that as a result of the separation of the institutions the number of faculty at UT-B would be reduced; that action also

applied to tenured faculty such as Plaintiff. The actual need, however, for a reduction in force (“RIF”) is undercut by the reality that UT-B subsequently began hiring instructors for the English and other departments at the very same time that it was acting to terminate Susan Mills and other tenured professors similarly situated.

*Departmental Review Committees  
appointed by President Garcia*

4.5 In March 2012, Defendant Artibise, as the Provost and Vice President for Academic Affairs at UT-B, recommended the faculty members who would serve on the departmental review committees for each college within UT-B. *See, generally, Exhibit A* (“Provosts Charge”), *infra*, attached hereto.

4.6 Acting upon Artibise’s recommendations, Defendant Garcia then officially appointed the members of the departmental review committee (hereinafter “DRC”) for the Department of English to review the credentials of each of the faculty members and to make recommendations for termination of faculty members based upon the academic qualifications of the faculty members as derived from their academic transcripts. A true and correct copy of the Committee Guidelines and Provost’s Charge (hereafter the “Provost’s Charge”) is attached hereto as **Exhibit A** and incorporated herein for all purposes.

4.7. Significantly, the Provost’s Charge recognized that the executive Vice Chancellor for academic affairs of the University of Texas System had instructed UT-B that the faculty retention priorities must reflect that the decision-making criteria utilized by the departmental review committee had been based upon criteria approved by the Southern Association of Colleges and Schools (hereinafter “SACS”). One of such mandated criteria was the enunciated position that “Ed.D. degrees are not terminal degrees in the discipline or in a related discipline

for purposes of SACS accreditation outside the College of Education." See **Exhibit A** ("Provosts Charge"), attached hereto.

4.8 Charged with responsibility of evaluating the English Department faculty members pursuant to the mandates in the Provosts Charge (which supposedly incorporated the criteria of SACS), the DRC undertook to make evaluations of the English Department faculty, which included Plaintiff. The Provost's Charge required that a majority of the five members must agree on the classification of faculty members into the various levels based upon their academic qualifications. Upon the conclusion of its evaluation, the DRC submitted its evaluations of each of the faculty members to the Provost's office. A true and correct copy of the initial evaluation is attached hereto, *under seal*, as **Exhibit B**.

4.9 Appended to the original evaluation submitted by the majority of the DRC was a minority recommendation (hereinafter "Minority Recommendation") submitted by one of the five committee members, Charles Dameron, to elevate a certain faculty member (hereinafter "Subject Faculty Member") from a lower level of classification to a higher level of classification which would allow the Subject Faculty Member to leapfrog over three faculty members, including the Plaintiff.

4.10 In and of itself, the Minority Recommendation was not sufficient to merit action by either the Provost or the DRC. More damaging, however, is the fact that the Minority Recommendation was later proven to have been based upon false assumptions which were later acknowledged by Charles Dameron to have been mistakes.

4.11 Without even conducting his own evaluation or investigation into the matters raised within the "Minority Recommendation," Defendant Artibise adopted the "Minority Recommendation" offered by Dameron. The factual misstatements made by Charles Dameron

were not discovered, but were, in fact, relied upon by the Provost, Defendant Artibise, in making his decision to reject the evaluations of the majority of the DRC and accept the Minority Recommendation of Charles Dameron. This action allowed the Subject Faculty Member to leap frog over three other faculty members which action resulted in the termination of Plaintiff Susan Mills.

4.12 Thereafter Defendant Artibise “instructed” the DRC that the Subject Faculty Member is “entitled to Priority Category Five.” A true and correct copy of the instruction is attached hereto, *under seal*, as **Exhibit C**.

4.13 The instruction by Defendant Artibise to the DRC was also in complete contravention to the basic tenets of the Provost’s Charge. *See, generally*, “**Exhibit A**.” It ignored the mandate from the UT System that SACS evaluation criteria be precisely followed and it consisted of an order made to the DRC rather, than a request that the DRC re-evaluate the academic credentials of the Subject Faculty Member.

4.14 Furthermore, if Defendant Artibise had taken the time to review the transcripts of the Subject Faculty Member, he would have noticed that the number of hours in English which the Subject Faculty Member had earned, were, in fact, erroneous. Instead, as later admitted by Dameron, the Subject Faculty Member had substantially less hours in English than he had assumed at the time he wrote his Minority Recommendation.

4.15 The number of English hours represented by Dameron to have been gained by the Subject Faculty Member was incorrect because the English courses were the same courses and inexplicably were being counted twice by Dameron rather than only once.

4.16 Based upon the “Instruction” received from the Provost to “revisit its recommendations with the special instruction that [Subject Faculty Member] is entitled to Priority Category Five,”

the DRC simply rubber-stamped this mandate from the Provost. Obviously, if it had re-evaluated the academic credentials of the Subject Faculty Member, it would have noticed the erroneous amount of hours which supposedly entitled that Subject Faculty Member to the higher priority level. The DRC, therefore, elevated that person's academic standing from a Level 7 to Level 5. It thereafter submitted its amended evaluation/recommendation to the Provost's office. A true and correct copy of the amended evaluation is attached hereto, *under seal*, as **Exhibit D**. The DRC failed to abide by the Provost's Charge, its own regulations, because it, similar to Dameron and Artibise, also did not again adequately review the academic transcript of the Subject Faculty Member. If it had, it would have noticed that the number of hours claimed by the Subject Faculty Member was erroneous, and such person still would not have qualified for the elevation from Level 7 to Level 5.

4.17 Thus, on April 23, 2012, based on the foregoing acts of the officers, agents and/or employees of UT-B acting under the color of law and contrary to her status as a tenured professor, the Plaintiff was advised that she had been recommended for termination effective May 31, 2013. That notification itself did not state that it was final. For that reason – not believing it was necessary to take action with respect to a recommendation that was not identified as final – and also because the materials to challenge that recommendation, in part, were composed of confidential materials relating to other faculty members under evaluation, the Plaintiff's hands were tied from effectively questioning the recommendation. Further, while it was foreseeable that confidential materials would be used, the Provost's Charge did not provide a procedure whereby a faculty member could review otherwise confidential materials in order to challenge a recommendation. *See, generally*, Provost's Charge, "Exhibit A."

4.18 On July 31, 2012, Plaintiff was provided with an official Notice of Termination. Plaintiff timely appealed the termination in accordance with Rule 31003 of the Board of Regents' Rules and Regulations.

*The Hearing Committee recommended accepting the appeal of Plaintiff Susan Mills, concluding the termination was "arbitrary and unreasonable."*

4.18 On October 11, 2012, the Plaintiff's appeal of her termination was considered by the Hearing Committee consisting of three faculty members appointed by the Provost.

4.19 The hearing consisted of oral testimony from the following: Defendant (and Provost) Artibise, Charles Dameron, Daniel Heimmermann (the chair of the DRC) and Plaintiff. A true and correct copy of the testimony from the hearing is attached hereto, *under seal*, as **Exhibit E**. Also introduced were numerous documents related to the issues raised in the appeal.

4.20 The Hearing Committee issued its findings on November 5, 2012 to the UT-B President, Defendant Garcia.

4.21 The Hearing Committee **unanimously** found in favor of Plaintiff and rendered its decision on November 5, 2012. A true and correct copy of the Hearing Committee Decision is attached hereto, *under seal*, as **Exhibit F**. The Hearing Committee itself concluded that the Provost's decision to terminate Plaintiff was "**arbitrary and unreasonable.**" The Hearing Committee recommended to the President to accept the appeal of Susan Mills.

*Defendant Garcia rejected the findings of the Hearing Committee who had considered all the documentary evidence and heard the testimony first-hand.*

4.22 On December 19, 2012, Defendant Garcia rejected the findings of the Hearing Committee and imposed the decision to terminate Plaintiff's position at UT-B. A copy of the



letter from her is hereby filed *under seal* as **Exhibit G**. Defendant Garcia stated that she disagreed with the conclusion of the Hearing Committee. The Hearing Committee's letter (**Exhibit F**) consists of six full pages of analysis and record citations. Defendant Garcia's letter (**Exhibit G**) devotes four paragraphs to that matter.

4.23 Rather than seeing the Minority Recommendation for what it was, namely, an end run around the Plaintiff's procedural rights as a tenured faculty member, Defendant Garcia's letter silently confirms the unconstitutional action of:

- (i) Dameron by submitting a factually erroneous Minority Recommendation to the Provost for the "reassignment" of the Subject Faculty Member;
- (ii) by Artibise for failing to verify the veracity of the factual allegations made by Dameron;
- (iii) by Artibise in "instructing" the DRC to reclassify the Subject Faculty Member in contravention of his own Provost's Charge, and
- (iv) by the DRC in failing to abide by the Provost's Charge and by failing to independently verify the validity of the factual representations made by Dameron in his Minority Recommendation and in failing to review the transcript of the Subject Faculty Member after being "instructed" to re-evaluate the Subject Faculty Member once more.

See **Exhibit G**, Garcia Ltr of Dec., 19, 2013, p. 1, ¶ 4.

4.24 Further, at its core the reasoning of Garcia's letter is internally inconsistent. It expressly admits the validity of the Hearing Committee's action in identifying the DRC's reassignment of the Subject Faculty Member as an error, admitting in her own words that "this [erroneous reassignment] may be the case." **Exhibit G**, Garcia Ltr of Dec., 19, 2013, p. 2 ¶ 1 (second sentence) Defendant Garcia, however, does not even get close to explaining how the Hearing

Committee was “right” in its determination that the Subject Faculty Member did not merit the re-classification, but was “wrong” in its conclusion that the Plaintiff should be re-hired. Thus, she determined that the Hearing Committee, after considering all of the evidence was partially right and partially wrong — all from the same bundle of facts. Further, Defendant Garcia ignores the practical effect on the ultimate adverse employment decision by UT-B of the decision by one of Mills’ fellow colleagues (with whom the Plaintiff was in competition for a continuing position) who voluntarily “resigned” in exchange for compensation from UT-B. *Id.* Finally, Defendant Garcia resorts to a semantic trick in stating that she is “upholding” the decision to terminate Plaintiff when, in fact, the Hearing Committee reversed the ruling of the DRC and had reversed that termination. **Exhibit G**, Garcia Ltr of Dec., 19, 2013, p. 2 (penultimate paragraph).

4.25 Plaintiff Susan Mills is a tenured professor ("Tenured Faculty Member") at UT-B. Specifically, she is an Associate Master Technical Instructor in the English Department at the College of Liberal Arts at UT-B. She is a respected teacher who focuses on teaching. As noted above, through hard work and disciplined effort Susan Mills has met or exceeded the requirements for tenure and was granted tenure at UT-B.

4.26 This case illustrates the tension between faculty and top members of the UT-B administration with respect to tenure rights. Institutions of higher education such as UT-B are essential for the maintenance of a free, democratic society. America as a democratic society exists for the common good. This common good can be assured only through the free search for and the free exposition of truth and understanding in whatever form wherever and whenever they may be found. The *raison-d'être* for UT-B and any university worthy of the name is to provide its academic community with the freedom to learn and to teach what scholarship suggests is the

truth and to protect its academic community by providing them the stability to question generally accepted tenets and to publish without fear of reprisal what scholarship has discovered.

4.27 In this case, the UT-B administrators established the protocols and procedures (the Provost's Charge), which were supposed to protect the due process rights of the faculty members by ensuring fair and impartial treatment. These same UT-B administrators then ignored such protocols and procedures in dealing with Susan Mills. They obviously ignored the protocols and procedures because they wanted to achieve and intended result, which result did not contemplate maintaining Susan Mills as a faculty member. The academic community needs protection from outside interference in order to perform its mission. The academic community cannot tolerate actions that hinder or make less effective the carrying out of that mission. The protections for the academic community are grounded both in the First Amendment's Free Speech Clause and also in the Due Process Clause. *See* U.S. Const., amend. I & V. In the final analysis the rules and procedures established by the UT System are supposed to protect the rights of individual members of the academic community whose lives and academic careers are supposed to be protected by the *honest and transparent* administration of such rules and procedures.

4.28 The freedoms protected by the Bill of Rights to the Constitution of the United States – including of course Free Speech and Due Process are indispensable safeguards to a democratic society; they are also indispensable for the protection of UT-B's academic community. It is respectfully suggested that Plaintiff Susan Mills is a strong, important rod comprising the fasces of the UT-B's academic community. UT-B cannot fulfill its duty to its own academic community or to society when such rights are not respected. Although these freedoms have long been accepted in democratic societies and reaffirmed when tested, they require individuals like

Plaintiff Susan Mills to vindicate their promise of American constitutional values via actions seeking injunctive relief such as this one.

**V.**

**UT-B OFFICIALS ACTED UNDER THE COLOR  
OF STATE LAW IN TERMINATING SUSAN MILLS.**

5.1 Plaintiff hereby complains of the following actions of Defendants Garcia, Artibise, Heimmermann and UT-B, as follows:

- a. Failure of UT-B to follow fair or proper procedures in the appointment of the Departmental Review Committee;
- b. Failure of the Departmental Review Committee to follow proper procedures and protocol related to the assignment of priorities and evaluation of all faculty members in Levels Five, Six and Seven;
- c. Failure to follow proper procedures and protocol by the Departmental Review Committee (“DRC”) in making the determination of which faculty to terminate;
- d. Disregard by the Provost’s of the mandates made by the University of Texas System related to SACS guidelines and failure of the Provost to implement and follow such mandates and failure to incorporate such guidelines into the Provost’s Charge or adhere to such guidelines during the evaluation of the faculty;
- f. Failure of the President, Provost and the DRC to adhere to certain procedures and guidelines incorporated and established within the DRC Guidelines and Provost’s Charge;
- f. Failure to properly and specifically review each faculty member within Levels Five, Six and Seven, including analysis of each such faculty member’s curriculum vitae, transcripts, memorandum of appointment, evaluations, promotion and tenure records and student evaluation summaries;
- g. Failure of the DRC to follow the DRC Guidelines and Provost’s Charge;
- h. Failure of the DRC to follow proper procedures and protocol in evaluating the factors which were to be determined from the files and records within the possession of UT-B including the following factors: undergraduate and graduate degrees, the teaching

discipline in which they are held, non-teaching work experience, professional licensure and certifications, honors and awards, demonstrated and recognized competence and achievements, research and scholarly pursuits, grant funding success, and history of service to UT-B, and the discipline;

- i. Failure of the DRC to properly evaluate and articulate why those recommended for retention demonstrate greater ability to contribute to the future academic mission;
- j. Failure of the DRC to follow proper tie breaking procedures;
- k. Failure of the DRC to properly make its recommendations to the Provost's office and to properly identify the faculty;
- l. Failure of the DRC to provide the rationale for its decisions to retain certain faculty;
- m. Failure of the DRC to properly make its recommendations to the Provost's office;
- n. Failure of the Provost's office to properly follow the established procedures in considering and acting on the recommendations of the DRC; and,
- o. Failure of the Provost's office to provide proper notification to Plaintiff;
- p. Misrepresentations made by UT-B that it is reducing its number of tenured faculty because of anticipated reduced enrollment and that, as a result of such reduced enrollment, there will not be any further need for many courses; yet UT-B continues to hire lecturers for courses which can be taught by the terminated faculty.

## **VI.**

6.1 The federal law in existence prior to the date on which the deliberate actions of Defendants Garcia, Heimmermann, and Artibise were taken was clearly established. As top administrators at UT-B, each of the Defendants owed the duty to stay informed about common constitutional rights and important features of employment law.

6.2 At the time that they took their actions with respect to Plaintiff, the Defendants either were aware or should have been aware of common constitutional rights enjoyed by those with

tenure at UT-B and also about the important features of employment law governing and protecting tenured instructors.

6.3 In terminating the employment relationship between UT-B and the Plaintiff, each of the three Defendants individually and jointly acted in violation of common constitutional rights and important features of employment law. They have deprived Plaintiff of her constitutional procedural due process rights. They even failed to abide by the guidelines and procedures which were supposed to be promulgated in the Provosts' Charge and failed to properly administer and adhere to such mandates.

6.4 The relevant law and regulations were clear at the time of those actions. By acting in violation of and contrary to UT-B's own established procedures, the consequence of the Defendants' acts was to terminate Plaintiff Susan Mills arbitrarily. By acting in violation of and contrary to UT-B's own established procedures, the consequence of the Defendants' acts was to terminate Plaintiff Susan Mills capriciously (definition: "governed or characterized by caprice: *impulsive, unpredictable*").<sup>1</sup> (emphasis added). By acting in violation of and contrary to UT-B's own established procedures, the consequence of the Defendants' acts was to terminate Plaintiff Susan Mills through improper means and motive. No reasonable administrator at UT-B could have believed his actions were objectively reasonable because the relevant law then-existing was clear at the time of the Defendants' actions.

*If UT-B's downsizing were something other than a ruse,  
then UT-B would not be hiring faculty at the same time  
that it is axing the positions of nearly ninety faithful educators.*

6.5 **Downsizing is a Myth.** If the downsizing of UT-B were a reality, UT-B would not be hiring faculty at the same time it is releasing nearly ninety faithful educators. In other words, the

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<sup>1</sup> URL: <http://www.merriam-webster.com/dictionary/capricious> [accessed 21 March 2013]

"downsizing" excuse for honoring its tenure commitments to its professors is a ruse. The real reason is financial exigency rather than downsizing.

6.6 Acting under color of law Garcia, Heimmermann, Artibise and others presently unknown to Professor Susan Mills acted as follows; to-wit:

- a. Acted as a public servant; and
- b. Acting under color of his office or employment; and
- c. Intentionally denied or impeded Plaintiff in the exercise or enjoyment of any right and privilege with respect to her office as a tenured professor at UT-B; and, further
- d. That these Defendants knew at the time of their conduct that such was unlawful.

6.7 The Plaintiff's rights to the guarantees of equal protection and due process applied to the states via the Fourteenth Amendment have been violated by the actions of the Defendants.

## **VII.**

### **TRIAL BY JURY**

7.1 Plaintiff Susan Mills hereby respectfully requests a trial by jury.

## **VIII.**

### **§ 1988 OF TITLE 42 AUTHORIZES AN AWARD OF ATTORNEYS' FEES**

8.1 42 U.S.C. § 1988 authorizes reasonable attorneys' fees that were necessarily incurred in the preparation of this matter for trial. Notice is given that attorneys' fees are hereby requested.

## **IX.**

### ***Prayer***

WHEREFORE, premises considered, the Plaintiff Susan Mills respectfully requests that a temporary restraining order pursuant to Rule 65(b) be entered in order to restrain immediately UT-B and its officials, agents and/or employees from implementing an unconstitutional violation

of her due process rights that have resulted in her termination; and, further, that an order to show cause be issued to UT-B to identify reasons if any that UT-B and its officers, agents and/or employees be enjoined during the course of this litigation from taking any actions to implement its unconstitutional decision pending final resolution of the matters resented herein for review; and, further, seeking this Court's declaration with respect to Plaintiff's contractual rights in the face of a purported reduction in force by UT-B; and, as a final injunctive remedy, seeking injunctive relief in the form of a decree that she be reinstated to her former position as tenured faculty member at UT-B; and further, in pursuit of these injunctive remedies Plaintiff respectfully requests that the Defendants be cited to appear and served with process and that upon the trial of this matter before a jury (if any) that judgment be entered in favor of the Plaintiff Susan Mills and against Juliet Garcia and Alan Artibise and Daniel Heimmermann as agents of UT-B who have acted under the color of state law and that the Plaintiff be reinstated, and in addition, that attorney's fees and allowable costs of court be awarded; and for all other relief in law or in equity to which Plaintiff Susan Mills may show herself to be justly entitled.

**JURY TRIAL DEMANDED.**

Respectfully submitted,

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